

FILED 08 MAY 02 11:25 USDC-OR

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JAMES ROBERT WARREN,

Petitioner,

Civil No. 07-238-CL

v.

REPORT AND
RECOMMENDATION

DON MILLS,

Respondent.

CLARKE, Magistrate Judge.

By Order (#21) entered January 7, 2008, petitioner was allowed an extension of time until March 13, 2008, to file a brief in support of his petition for habeas corpus relief. Petitioner did not filed a brief within the time allowed.

By Order (#23) entered April 16, 2008. petitioner was allowed 14 days to show cause in writing why respondent's motion to dismiss this proceeding on the ground that it was not filed within the statute of limitations [Response (#14)] should not be allowed.

Petitioner was advised that no further extensions of

time would be allowed and that his petition would be decided on the record before the court after the expiration of 14 days from the date of the Order (#23).

Plaintiff has not filed a response to the court's order. Respondent's Response (#14), Answer (#15), and Exhibits to Answer (#16) establish that petitioner did not file his petition within the time allowed by 28 U.S.C. 2244(d).

Petitioner's Petition (#1) should be denied as time barred. This proceeding should be dismissed.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten (10) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have ten (10) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 2 day of May, 2008.

A handwritten signature in black ink, appearing to read 'Mark D. Clarke', written over a horizontal line.

Mark D. Clarke
United States Magistrate Judge